Supreme Court, U.S.
FILED

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No. 01-

IN THE

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT BABB, EDEE TEMPLET, AND KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the All Writs Act, 28 U.S.C. § 1651(a), vests federal district courts with authority to exercise removal jurisdiction under 28 U.S.C. § 1441 over lawsuits brought in state court when the state court suit threatens the integrity of the federal court's rulings in ongoing complex litigation.[1]

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1. While acknowledging that five Circuits have taken a contrary position, the Court of Appeals for the Eleventh Circuit in this case, becoming the fourth Circuit to do so, held that the All Writs Act provides no such authority.

STATEMENT PURSUANT TO RULE 29.6

Petitioner, Syngenta Crop Protection, Inc., was formerly known as Novartis Crop Protection, Inc., which was formerly known as Ciba-Geigy Corporation. Its parent corporation is Syngenta Seeds, Inc., and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

	Page
Question Presented	i
Statement Pursuant to Rule 29.6	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	vii
Opinions Below	1
Statement of Jurisdiction	1
Statutory Provisions Involved	1
Statement of the Case	2
Reasons for Granting the Writ	7
I. The Eleventh Circuit's Determination that the All Writs Act Cannot Support Removal Jurisdiction Conflicts with the Contrary Determinations of the Second, Third, Sixth, Seventh, and Eighth Circuits, Further Aggravating the Pre-Existing Circuit Split	7
II. The Question Presented is Important	14
Conclusion	15

TABLE OF CITED AUTHORITIES

Page

Cases:

Baker Perkins, Inc. v. Werner & Pfleiderer Corp., 710 F.2d 1561 (CA Fed. 1983) 7

Bylinski v. City of Allen Park, 169 F.3d 1001 (CA6), *cert. denied*, 527 U.S. 1037 (1999) 4, 10

Commercial Sec. Bank v. Walker Bank & Trust Co., 456 F.2d 1352 (CA10 1972) 12

Davis v. Glanton, 107 F.3d 1044 (CA3), *cert. denied*, 522 U.S. 859 (1997) 5, 11

Hartman v. Diamond Shamrock Chems. Co., 510 U.S. 1140 (1994) 5

Hillman v. Webley, 115 F.3d 1461 (CA10 1997) 5, 12, 13, 14

In re Agent Orange Prods. Liab. Litig., 996 F.2d 1425 (CA2 1993), *cert. denied sub nom., Ivy v. Diamond Shamrock Chems. Co.*, 510 U.S. 1140 (1994) 5, 10, 11, 12

In re VMS Secs. Litig., 103 F.3d 1317 (CA7 1996) 5, 11, 12

Page

Nat'l Ass'n for the Advancement of Colored People v. Metro. Council, 125 F.3d 1171 (CA8 1997) ("*NAACP I*"), *vacated and remanded for reconsideration*, 522 U.S. 1145 (1998), *reinstated upon reconsideration*, 144 F.3d 1168 (CA8) ("*NAACP II*"), *cert. denied*, 525 U.S. 826 (1998) 4, 8, 14

Rivet v. Regions Bank of Louisiana, 522 U.S. 470 (1998) 13, 14

Sable v. Gen. Motors Corp., 90 F.3d 171 (CA6 1996) 4, 8, 9

Texas v. Real Parties in Interest, 259 F.3d 387 (CA5 2001) 7, 13

United States v. Am. Soc'y of Composers, Authors, & Publishers, 32 F.3d 727 (CA2 1994) 5

United States v. City of New York, 972 F.2d 464 (CA2 1992) 5

United States v. New York Tel. Co., 434 U.S. 159 (1977) 6, 9, 10, 11, 12, 13

Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C., 992 F.2d 932 (CA9 1993) 5, 6

Xiong v. Minnesota, 195 F.3d 424 (CA8 1999) 4, 7, 8

Yonkers Racing Corp. v. City of Yonkers, 858 F.2d 855 (CA2 1988), *cert. denied*, 489 U.S. 1077 (1989) 5

Cited Authorities

	Page
Statutes:	
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1404(a)	3
28 U.S.C. § 1441	i, 3, 4
28 U.S.C. § 1441(a)	1, 6
28 U.S.C. § 1651(a)	i, 1

TABLE OF APPENDICES

	Page
Appendix A — Per Curiam Opinion And Judgment Of The United States Court Of Appeals For The Eleventh Circuit Dated And Filed August 14, 2001	1a
Appendix B — Order Of The United States District Court For The Southern District Of Alabama, Southern Division In *Price, et al. v. Ciba-Geigy Corporation* Dated And Filed November 24, 1998	15a
Appendix C — Order Of The United States District Court For The Southern District Of Alabama, Southern Division In *Henson, et al. v. Ciba-Geigy Corporation, et al.* Dated And Filed November 24, 1998	18a

Syngenta Crop Protection, Inc., Robert Babb, Edee Templet, and Kenneth A. Devun respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals, App., *infra*, 1a-12a, is reported at 261 F.3d 1065. The opinion of the district court, App., *infra*, 15a-18a, is unreported.

STATEMENT OF JURISDICTION

The court of appeals entered its judgment on August 14, 2001. App., *infra*, 13a-14a. No one filed a petition for rehearing. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a), provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Section 1441(a) of the Judicial Code, 28 U.S.C. § 1441(a), provides that

> Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district

court of the United States for the district and division embracing the place where such action is pending. . . .

STATEMENT OF THE CASE

Along with six other individuals, Respondent Hurley Henson filed a class action suit against Petitioners Syngenta Crop Protection, Inc., Robert Babb, Edee Templet, and Kenneth A. Devun. Henson filed the suit in the 18th Judicial District Court for the Parish of Iberville, Louisiana, on behalf of all individuals who worked at the Syngenta facility in St. Gabriel, Louisiana. He sought damages for injuries resulting from exposure to various chemicals, including chlordimeform, an active ingredient in a pesticide Syngenta manufactures, and atrazine, a Syngenta herbicide.

Another class action, *Price v. Ciba-Geigy Corp.*, No. 94-0647, involving virtually identical claims, had been filed in the circuit court of Mobile County, Alabama. Defendants in that case removed it to the United States District Court for the Southern District of Alabama, which certified a nationwide class. Later, that court approved a structured, class-wide settlement.

The Louisiana state court stayed Respondent Henson's suit when he and others successfully intervened in *Price* and participated in the *Price* settlement. As a component of the settlement, a stipulation was entered requiring, among other things, that Henson's case (including all claims against Syngenta and the individual defendants) be dismissed.

Once the Alabama federal court approved the *Price* settlement, making the stipulation a part of its judgment

approving the class settlement, class counsel in *Price* complied with the stipulation and prompted the Louisiana state court to enter an order to show cause why the action should not be dismissed because of the stipulation. Henson's Louisiana counsel, who had represented Henson and the others in the *Price* proceedings and who had signed the stipulation on their behalf, told the Louisiana court that the *Price* settlement required dismissal only of those claims concerning chlordimeform and not of claims resulting from exposure to other chemicals.

This was incorrect because the stipulation named the entire *Henson* action by docket number and said nothing about dismissing only certain claims. But counsel's representation successfully lured the Louisiana court into inviting Henson and the other plaintiffs to amend their petition to assert tort claims arising from exposure to atrazine. And amend they did.

Once that happened, Syngenta and the three individual defendants removed the case, in accordance with 28 U.S.C. § 1441, to the United States District Court for the Middle District of Louisiana based on the All Writs Act. Concurrently, under 28 U.S.C. § 1404(a), the defendants filed, and the court granted, a motion to transfer the case to the Southern District of Alabama.

Shortly after the case arrived, the Southern District of Alabama dismissed *Henson* as barred by the stipulation in the *Price* settlement. In addition, the court, exercising jurisdiction in the *Price* case itself, ordered Henson's counsel to pay Syngenta the legal fees it incurred in enforcing the *Price* settlement as a result of Henson's counsel's efforts to thwart it.

On Henson's appeal, the Court of Appeals for the Eleventh Circuit affirmed the district court's imposition of sanctions on Henson's counsel. App., *infra*, 6a,12a. Concluding, however, that the district court lacked subject matter jurisdiction over the removed case, the court vacated the trial court's judgment dismissing *Henson* and remanded with instructions to remand the case to the Louisiana state court. App., *infra*, 10a, 12a.

In so doing, the Eleventh Circuit explained that whether a district court has jurisdiction under the All Writs Act over an action removed under § 1441 was, in the Eleventh Circuit, an open question. It also acknowledged that the "circuits have split in addressing similar questions of federal courts' power under the All Writs Act to protect judgments and control diehard litigants." App., *infra*, 8a.

Indeed, it recognized that the Sixth and Eighth Circuits have held that state-court suits that could produce judgments undermining federal consent orders — and in one case a state-court action that was merely barred by the preclusive effect of a federal consent decree — are removable under § 1441, with original subject-matter jurisdiction supplied by the All Writs Act. App., *infra*, 8a (citing *Xiong v. Minnesota*, 195 F.3d 424, 426 (CA8 1999); *Bylinski v. City of Allen Park*, 169 F.3d 1001, 1003 (CA6), *cert. denied*, 527 U.S. 1037 (1999); *Nat'l Ass'n for the Advancement of Colored People v. Metro. Council*, 125 F.3d 1171, 1174 (CA8 1997) ("*NAACP I*"), *vacated and remanded for reconsideration*, 522 U.S. 1145 (1998), *reinstated upon reconsideration*, 144 F.3d 1168, 1169 (CA8) ("*NAACP II*"), *cert. denied*, 525 U.S. 826 (1998); *Sable v. Gen. Motors Corp.*, 90 F.3d 171, 175 (CA6 1996)).

The Eleventh Circuit recognized that the Second Circuit, too, has taken a similar approach, holding that a district court may, on motion of parties to an action over which it has jurisdiction, order a common-law removal to federal court of a state-court action, even if there is no other basis for federal subject-matter jurisdiction, when the prosecution of the state-court action threatens the integrity of a consent decree or judgment entered in the federal action. App., *infra*, 8a (citing *In re Agent Orange Prods. Liab. Litig.*, 996 F.2d 1425, 1431 (CA2 1993), *cert. denied sub nom., Ivy v. Diamond Shamrock Chems. Co.*, 510 U.S. 1140 (1994) and *Hartman v. Diamond Shamrock Chems. Co.*, 510 U.S. 1140 (1994); *United States v. City of New York*, 972 F.2d 464, 469 (CA2 1992); *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855, 855 (CA2 1988), *cert. denied*, 489 U.S. 1077 (1989); *United States v. Am. Soc'y of Composers, Authors, & Publishers*, 32 F.3d 727, 731 (CA2 1994) (All Writs Act provides independent ground of federal subject-matter jurisdiction of motion to vacate an arbitral award, when the parties arbitrated according to the terms of a preexisting federal consent decree)).

The Eleventh Circuit also acknowledged that both the Seventh Circuit and the Third Circuit have embraced the Second Circuit rule. App., *infra*, 9a (citing *In re VMS Secs. Litig.*, 103 F.3d 1317 (CA7 1996); *Davis v. Glanton*, 107 F.3d 1044 (CA3), *cert. denied*, 522 U.S. 859 (1997)).

On the other hand, the Eleventh Circuit recognized that the minority of courts have taken a less expansive view. App., *infra*, 9a (citing *Hillman v. Webley*, 115 F.3d 1461, 1469 (CA10 1997) (All Writs Act does not furnish removal jurisdiction at all because it confers no independent jurisdiction); *Westinghouse Elec. Corp. v. Newman &*

Holtzinger, P.C., 992 F.2d 932, 937 (CA9 1993) (All Writs Act may be invoked by a district court only in aid of jurisdiction it already has)).

Casting its lot with the minority, the Eleventh Circuit concluded that the district court lacked removal jurisdiction over the *Henson* case. App., *infra*, 10a. The court based its conclusion on two principles. First, § 1441(a) authorizes removal only of actions over which the district courts have original jurisdiction. This means that actions are not removable unless they originally could have been filed in federal court. The implication of that rule, noted the court, is that removal is proper only if the All Writs Act could have furnished subject-matter jurisdiction over the *Henson* action if it had first been filed in federal court. Second, the All Writs Act does not provide an independent basis of federal subject matter jurisdiction, *i.e.*, a plaintiff cannot sue invoking only the court's All Writs power. App., *infra*, 10a.

The Eleventh Circuit rejected the argument that the All Writs Act is jurisdictional "caulk" — plugging the cracks in federal jurisdiction through which crafty litigants can escape the effect of a federal order. App., *infra*, 11a (citing *United States v. New York Tel. Co.*, 434 U.S. 159, 172-73 (1977)) (articulating this broad view of the All Writs Act's purpose). The court disagreed with the argument that the Act authorizes virtually any exercise of authority that is convenient for effectuating a federal judgment, including the exercise of removal jurisdiction over a different action whose prosecution is inconsistent with a federal judgment. It concluded that this reasoning goes too far — *i.e.*, that too elastic an interpretation of the All Writs Act perverts it from a tool for effectuating Congress's intent in conferring jurisdiction on the federal courts to a device for judicially

re-equilibrating a state-federal balance that is Congress's to strike. App., *infra*, 11a.

Accordingly, the Eleventh Circuit vacated the district court's order dismissing *Henson* and remanded to the district court with instructions to that court to remand *Henson* to the Louisiana state court. App., *infra*, 12a.

REASONS FOR GRANTING THE WRIT

As the Eleventh Circuit acknowledged, App., *infra*, 8a-11a, its decision in this case conflicts with decisions of the Second, Third, Sixth, Seventh, and Eighth Circuits, while agreeing with those of the Ninth and Tenth Circuits. Recently, the Fifth Circuit, in *Texas v. Real Parties in Interest*, 259 F.3d 387 (CA5 2001), a case not cited by the Eleventh Circuit, appears to have agreed with the Eleventh Circuit's approach. The tally, therefore is 5-4,[2] yielding the sort of disarray that this Court should act to harmonize. Beyond that, the Eleventh Circuit's decision is erroneous, and the issue it has resolved is an important one.

I. The Eleventh Circuit's Determination that the All Writs Act Cannot Support Removal Jurisdiction Conflicts with the Contrary Determinations of the Second, Third, Sixth, Seventh, and Eighth Circuits, Further Aggravating the Pre-Existing Circuit Split

In *Xiong*, the Eighth Circuit faced the same issue as did the Eleventh Circuit here. The Eighth Circuit concluded that because federal court control of the removed class action suit was necessary to effectuate and prevent the frustration of a consent

2. *See also Baker Perkins, Inc. v. Werner & Pfleiderer Corp.*, 710 F.2d 1561, 1565 (CA Fed. 1983) (All Writs Act is not an independent basis of jurisdiction) (*dictum*).

decree in an earlier federal class action case, one over which the district court had retained jurisdiction, removal of the case before it was appropriate under the All Writs Act. *Id.*, 195 F.3d at 427. In so holding, the Eighth Circuit relied on its previous rulings in *NAACP I* and *NAACP II*.

There, the Eighth Circuit had recognized that the district court was confronted with a situation where parties subject to the district court's continuing jurisdiction under the consent decree in a previous case were resorting to a state forum to relitigate settled and released claims. "Faced with this circumstance, we believe the district court was warranted in authorizing removal from state court under the All Writs Act to protect the integrity of the federal consent decree [previously] entered. . . ." 125 F.3d at 1173.

The Sixth Circuit, in *Sable*, was presented with a district court's ruling denying a plaintiff's motion to remand a case removed from Michigan state court to the Eastern District of Michigan. In an earlier case, the United States had sued the plaintiff in federal court to recover some of the investigation costs incurred by the Environmental Protection Agency in conducting a Remedial Investigation and Feasibility Study of property owned by the plaintiff and used as an industrial waste landfill site. The parties settled and entered into a consent agreement involving a cash payment to the EPA for its cleanup efforts and the granting to the EPA of access to the site. The consent agreement also imposed deed restrictions that severely limited access to and use of the site.

In separate consent agreements, the defendants in *Sable* had agreed to pay a significant sum to design and implement a system to contain the chemicals on the site. The agreement contained the same deed restrictions.

In the state court suit, plaintiff sought damages for defendants' breach of their duty to remove all contaminants dumped in the site as well as damages for loss of the use of the land resulting from the deed restrictions. The federal district court denied plaintiff's motion to remand the case to the Michigan state court whence it came.

Affirming the trial court's judgment, the Sixth Circuit concluded, among other things, that the district court's decision to keep plaintiff's case in federal court to protect the EPA-negotiated consent agreements "is supported by the Court's powers under the All Writs Act. . . ." *Sable*, 90 F.3d at 175. In support of its conclusion, the Sixth Circuit quoted from this Court's opinion in *United States v. New York Tel. Co.*, 434 U.S. 159 (1977). It explained that this Court has " 'repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued. . . .' " 90 F.3d at 175 (quoting *New York Telephone*, 434 U.S. at 172). Further, " '[t]he power conferred by the [All Writs] Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice. . . .' " *Id.* (quoting *New York Telephone*, 434 U.S. at 174).

Determining that the plaintiff's requested relief would seriously interfere with provisions in the consent agreements, the Sixth Circuit concluded that the district court "was well within its discretion" in denying the motion to remand, "for it had power under the All Writs Act to protect the federal consent agreements from conflicting state orders." *Id.*

Later, in *Bylinski*, the Sixth Circuit reaffirmed the principle that the All Writs Act gives federal courts the authority to remove an otherwise unremovable state court case to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained. *Id.*, 169 F.3d at 1003.

The Second Circuit, in a decision that conflicts with that of the Eleventh Circuit in this case, has approved of removal under the All Writs Act. *In re Agent Orange Prods. Liab. Litig.* involved suits brought by two groups of veterans and their family members who filed class action suits in state court seeking damages from seven chemical companies that manufactured the defoliant Agent Orange. The defendants removed the cases to federal court, and the Judicial Panel on Multidistrict Litigation transferred the cases to the Eastern District of New York. It did so because the Eastern District of New York had presided over hundreds of consolidated cases involving injuries alleged to have been caused by exposure to Agent Orange. It had certified class actions and presided over a class-wide settlement that, among other things, barred class members from instituting or maintaining an action against the defendants based on Agent Orange exposure.

The Eastern District of New York, which had maintained ongoing supervision of the payment of claims in accordance with the settlement agreement, denied the plaintiffs' motion to remand and dismissed the suits as barred by the previous settlement. Relying on *New York Telephone*, the Second Circuit concluded that removal was an appropriate use of federal judicial power under the All Writs Act. *Agent Orange*, 996 F.2d at 1431. Given what it referred to as the "exceptional circumstances" surrounding the case, exercising jurisdiction

over the removed cases "was a proper exercise of judicial discretion." *Id.* The district court was "not determining simply the preclusive effect of a prior final judgment on claims or issues expected to be raised in subsequent collateral proceedings." *Id.* Rather, it was "enforcing an explicit, ongoing order against relitigation of matters it already had decided, and guarding the integrity of its rulings in complex multidistrict litigation over which it had retained jurisdiction." *Id.*

While declining to exercise jurisdiction under the All Writs Act in *Davis*, the Third Circuit accepted the Second Circuit's teachings in *Agent Orange*. Citing *New York Telephone*, it noted that a federal district court, in exceptional circumstances, may use its authority under the All Writs Act to remove an otherwise unremovable state court action to prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained. *Davis*, 107 F.3d at 1047 n.4. The Third Circuit concluded that the defendants had not demonstrated how removal would support jurisdiction that is already in existence, and they failed to identify the "extraordinary circumstances" necessary to justify removal under the Act. *Id.* Given that the court recognized the authority of the federal district courts to exercise jurisdiction at all, the Third Circuit's governing law conflicts with that expressed by the Eleventh Circuit here.

The Eleventh Circuit's ruling here also runs counter to the law of the Seventh Circuit. In *VMS Securities Litigation*, the court concluded that where the district court had retained jurisdiction over previous actions, it could properly remove a subsequently-filed state court suit under the All Writs Act. *Id.*, 103 F.3d at 1323. The Seventh Circuit, too, relied on *New York Telephone*, which it described as this Court's

championing of a federal court's power to use the Act to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained. *Id.* Applying what it characterized as "the Second Circuit's sound reasoning from *Agent Orange*," the Seventh Circuit concluded that allowing the plaintiffs to maintain separate actions in state court would have a substantial "deleterious effect" on the previously-entered settlement mechanisms. *Id.*, 103 F.3d at 1324. In the Seventh Circuit's view, the "exceptional circumstances" warranted "this proper exercise of judicial discretion." *Id.*

The Tenth Circuit, with whom the Eleventh Circuit has allied itself, encountered, in *Hillman*, a situation "strikingly similar" to the one presented to the Second Circuit in *Agent Orange*. *Hillman*, 115 F.3d at 1468. What was not strikingly similar was the court's conclusion. The Tenth Circuit concluded that the district court had erred in relying on the All Writs Act in assuming jurisdiction over a state court suit even though that suit involved a common nucleus of facts and raised claims similar to those previously settled in the multidistrict litigation. While it recognized that the district court "was simply attempting to guard the integrity of its prior rulings in the multidistrict litigation," the Tenth Circuit concluded that interpreting the All Writs Act as a basis for federal jurisdiction in extraordinary circumstances was foreclosed by its earlier decision in *Commercial Sec. Bank v. Walker Bank & Trust Co.*, 456 F.2d 1352 (CA10 1972). There, it had held that the All Writs Act does not operate to confer jurisdiction and that the Act does not allow a court to acquire jurisdiction over an individual or property not otherwise subject to its jurisdiction. *Id.* at 1355. Because it concluded that the district court did not have jurisdiction, the Tenth Circuit reversed and remanded the case to the district court with directions to remand to the state court.

Indicating just how contentious this issue has remained, one judge on the *Hillman* panel expressly disagreed that the Tenth Circuit's precedents required it to construe the All Writs Act so narrowly. "In my view, a district court retains authority to remove an otherwise unremovable state-court case to federal court in appropriate and narrow circumstances in aid of its jurisdiction." *Id.*, 115 F.3d at 1470 (Kelly, J., concurring in result). Judge Kelly thought the majority's result to be at odds with *New York Telephone*. *Id.*

Most recently, the Fifth Circuit, in *Real Parties in Interest*, held that the district court had erred in exercising its jurisdiction under the All Writs Act and in denying the plaintiff's motion to remand. *Id.* 259 F.3d at 395. It stopped short of determining whether, under extraordinary circumstances, such a case may be removed under the All Writs Act. "In the absence of such extraordinary circumstances, however, that indisputably *demand* such a course of action as absolutely necessary to vouchsafe the central integrity of the federal court judgment, we hold that the All Writs Act cannot be employed as a vehicle for removal." *Id.*

The court, however, left little doubt as to its inclination, characterizing as a "remote proposition" whether removal can be proper under the All Writs Act even in the face of extraordinary circumstances. *Id.* at 394. The Fifth Circuit also expressed reservation that the principle that an otherwise non-removable action becomes removable under the All Writs Act could remain valid in light of this Court's decision in *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470 (1998). "With *Rivet* standing as sentry, it would be bold indeed to read the All Writs Act as authorizing removal of an otherwise unremovable action." 259 F.3d at 393-94.

Interestingly, after this Court issued its opinion in *Rivet*, it issued a GVR order in *Nat'l Ass'n for the Advancement of Colored People v. Metro. Council*, 522 U.S. 1145 (1998). On reconsideration, the Eighth Circuit reinstated its previous opinion, concluding that *Rivet* did not compel a contrary result, *see Nat'l Ass'n for the Advancement of Colored People v. Metro. Council*, 144 F.3d 1168 (CA8 1998), and this Court thereafter denied review of the Eighth Circuit's subsequent ruling. *See Nat'l Ass'n for the Advancement of Colored People v. Metro. Council*, 525 U.S. 826 (1998).

Having percolated its way through still another Circuit, the issue is before the Court again today for resolution. The Eleventh Circuit's ruling directly conflicts with decisions of four other Circuits, and the Court should grant certiorari to review this important conflict.

II. The Question Presented is Important

The importance of the question presented is neatly encapsulated by Judge Kelly's observation in *Hillman* that the Tenth Circuit's reasoning (and by extension, that of the Eleventh Circuit in this case) "deprives the district courts of an important tool for vindicating their orders in exceptional cases. . . ." *Id.*, 115 F.3d at 1471. Indeed, Syngenta believes the Eleventh Circuit's ruling further exacerbates an intolerable schism. In some Circuits, diehard litigants may, willy-nilly, file suits in state court that thwart the integrity of the federal courts' consent decrees, settlement agreements, and ongoing supervision of other complex cases. At the same time, in other Circuits, the district courts are empowered to exercise removal jurisdiction to stop the state cases in their tracks.

While Syngenta does not presume to assert standing on behalf of the district courts to protect and effectuate their judgments, it *does* assert the right to go about its business in peaceful reliance upon the terms of the nationwide class action settlement in *Price* without being compelled to defend against the same claims re-filed by recalcitrant plaintiffs, plaintiffs who successfully intervened in the *Price* suit, agreed to the settlement terms, and reaped the benefits of that settlement.

This case presents the Court with an opportunity to address the reach of the All Writs Act and to harmonize the widening Circuit split. Consequently, the Court should grant the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT DATED AND FILED AUGUST 14, 2001

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-6021
D. C. Docket No. 98-01150-CV-CB

HURLEY HENSON,

Plaintiff-Appellant,

versus

CIBA-GEIGY CORPORATION,
ROBERT RAAB, et al.,

Defendants-Appellees.

No. 99-6130
D. C. Docket No. 94-00647-CV-CB-S

RUSSELL PRICE, et al., on behalf of themselves
and others similarly,

Plaintiffs-Appellants,

Appendix A

HURLEY HENSON,

Movant-Appellant,

versus

CIBA-GEIGY CORPORATION, a corporation,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Alabama

(August 14, 2001)

Before EDMONDSON, CARNES and COX, Circuit Judges.

PER CURIAM:

These consolidated appeals arise from two actions, both of which originally asserted various tort claims arising from Ciba-Geigy Corporation's manufacture and sale of a chlorodimeform-based insecticide, Galecron. The principal issue presented is whether the district court had removal jurisdiction under 28 U.S.C. § 1441 and the All Writs Act, 28 U.S.C. § 1651, over a later action solely because prosecuting that action violated a settlement stipulation in an earlier action already before the court. We hold that it did not.

Appendix A

Background

The first of the two actions, *Price v. Ciba-Geigy Corp.*, was originally filed in the circuit court of Mobile County, Alabama. The defendants later removed it to the Southern District of Alabama, which certified a nationwide class and approved a complicated, structured settlement. The second, *Henson v. Ciba-Geigy Corp.*, originated in state district court in Iberville Parish, Louisiana. The Louisiana court stayed *Henson* after its named plaintiff and others successfully intervened in *Price* (where they were called the Henson interveners) and participated in the *Price* settlement. The settlement stipulation in the *Price* action had a clause requiring *Henson*'s dismissal:

> CLASS COUNSEL hereby stipulates that the RELATED CASE, including any and all claims (including, without limitation any CLAIMS defined herein) against CIBA GEIGY CORPORATION and individual defendants . . . shall be dismissed, with prejudice, as of the APPROVAL DATE.

(R.7-84-Ex. A at 18.) "Related case" means, according to the stipulation, "*Hurley Henson, et al v. Ciba-Geigy Corporation, et al* / Docket No. 43,620, 18th Judicial District Court, Parish of Iberville, State of Louisiana." (*Id.* at 15.)

Following the approval of the *Price* settlement, "class counsel" (lawyers for the original *Price* plaintiffs) complied with the stipulation and prompted the Louisiana state district court to enter an order to show cause why the action should

not be dismissed because of the stipulation. A hearing before the Louisiana district court ensued. Hany Zohdy, a Louisiana lawyer who represented the Henson interveners in the *Price* proceedings, told the Louisiana court that the *Price* settlement required dismissal only of claims concerning chlorodimeform and not claims about other chemicals handled by Ciba-Geigy. That was incorrect, of course, because the settlement stipulation plainly named the entire *Henson* action by docket number and said nothing about dismissing only certain claims.[1] Zohdy's representation nonetheless successfully misled the Louisiana court into inviting the Henson plaintiffs to amend their petition to assert tort claims arising from exposure to Atrazine, another toxic Ciba-Geigy product.

This amendment prompted Ciba-Geigy (and three individual defendants, all diversity-defeating Louisiana residents, who were also named in *Henson*) to remove the action to the Middle District of Louisiana under 28 U.S.C. § 1441(a), asserting federal jurisdiction based on the All Writs Act, 28 U.S.C. § 1651.[2] The defendants immediately requested a transfer to the Southern District of Alabama under 28 U.S.C. § 1404(a), which was granted. Following the transfer, the Southern District dismissed *Henson* as barred

1. In an earlier motion filed before the same Louisiana court, Zohdy had explained that "the definition of 'Related Case' found in the Stipulation of Settlement is without doubt an unambiguous reference to the instant case." (Mem. Supp. Mot. Lift Stay at 2.)

2. In addition to the lack of complete diversity, Ciba-Geigy could not have removed by asserting jurisdiction under 28 U.S.C. § 1332 because the notice of removal was filed more than one year after the action's commencement. *See* 28 U.S.C. § 1446(b).

by the *Price* settlement. Exercising jurisdiction in the *Price* action itself, moreover, the Southern District ordered Zohdy to pay about $27,000 to Ciba-Geigy for the legal fees it incurred in enforcing the *Price* settlement despite Zohdy's efforts to thwart it. These are the rulings that the *Henson* plaintiffs and Zohdy appeal.

Whether the district court had removal jurisdiction is a question we review de novo. *Singleton v. Apfel*, 231 F.3d 853, 856 (11th Cir. 2000). "We review the district court's construction of the [settlement stipulation] de novo." *Waters v. Int'l Precious Metals Corp.*, 237 F.3d 1273, 1277 (11th Cir. 2001). Whether the district court properly imposed sanctions for violation of a court-adopted stipulation of settlement we review for abuse of discretion only. *See Abbott Labs. v. Unlimited Beverages, Inc.*, 218 F.3d 1238, 1240 (11th Cir. 2000).

Discussion

Sanctions on Zohdy

Zohdy challenges the sanctions order on three meritless grounds. First, he says, the district court lacked jurisdiction to sanction him. Not so, because he was counsel of record in *Price*, the action in which he signed the settlement stipulation and in which he was sanctioned for violating the settlement. *See Levine v. Comcoa Ltd.*, 70 F.3d 1191, 1192 (11th Cir. 1995). Second, Zohdy argues, the settlement stipulation did not require dismissal of claims relating to Atrazine, and he therefore did not act contrary to the settlement. This contention is meritless; the stipulation language quoted above

explicitly requires dismissal of *all* claims in the *Henson* action, which the stipulation identifies by docket number. Finally, Zohdy asserts that *he* had no obligation to dismiss the *Henson* action because the settlement stipulation puts that onus on "class counsel," who do not include him. Perhaps that is so, but the district court sanctioned Zohdy, a signatory of the stipulation of settlement, for his efforts to undermine the settlement by preventing class counsel from discharging their duties to secure *Henson*'s dismissal. Whether or not Zohdy was specifically responsible for getting *Henson* dismissed, it was within the court's power to effectuate its orders to punish Zohdy for interfering with the settlement's implementation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 45, 111 S. Ct. 2123, 2133 (1991) (court has inherent power to assess attorney fees on counsel for willful contravention of court order).

Removal Jurisdiction Over Henson

Zohdy's challenge to the district court's subject-matter jurisdiction over *Henson* has more merit. The asserted jurisdictional basis is the All Writs Act, whose pertinent part provides district courts the power to protect their jurisdiction: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Thus, for example, a district court has the authority under the Act to enjoin a party to litigation before it from prosecuting an action in contravention of a settlement agreement over which the district court has retained jurisdiction. *See In re VMS Secs. Litig.*, 103 F.3d 1317, 1324 (7th Cir. 1996); *White v. Nat'l*

Football League, 41 F.3d 402, 409 (9th Cir. 1994); *Wesch v. Folsom*, 6 F.3d 1465, 1470 (11th Cir. 1993); *Kelly v. Merrill Lynch, Pierce, Fenner & Smith*, 985 F.2d 1067, 1069 (11th Cir. 1993). Whether a district court also has jurisdiction under the All Writs Act over an action removed under § 1441 is a question that is currently unanswered in this circuit.[3]

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3. We have come close. *Pacheco de Perez v. AT & T Co.*, 139 F.3d 1368, 1379 (11th Cir. 1998), concluded that even if All Writs Act removal jurisdiction existed in "exceptional circumstances," the circumstances in that case were not exceptional enough — only the preclusive effect of a federal judgment was at issue. *Id.* And in one of the 2000 presidential election actions, this court found a federal question, but did not "rule out other bases that federal jurisdiction might exist" over a removed action and cited other circuits' cases about the All Writs Act. *Harris v. Fla. Elections Comm'n*, 235 F.3d 578, 580 n.3 (11th Cir. 2000).

The issue is, by contrast, unavoidably presented here. First, there is no other possible ground of federal subject-matter jurisdiction. Ciba-Geigy's removal notice also alleged supplemental jurisdiction, by virtue of *Price*, under 28 U.S.C. § 1367. But § 1367 cannot provide the "original jurisdiction" that § 1441 demands for an action to be removable. *Ahearn v. Charter Township*, 100 F.3d 451, 456 (6th Cir. 1996). Ciba-Geigy did not, furthermore, assert ancillary jurisdiction, if such jurisdiction exists independent of § 1367 (*see Peacock v. Thomas*, 516 U.S. 349, 116 S. Ct. 862 (1996)), and we therefore do not address it as a potential basis. Second, the circumstances here fit the definition of "exceptional" that other circuits' cases imply, since a signatory to a federal settlement stipulation sought to sabotage it. *Cf. In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1430-31 (2d Cir. 1993) (absent class members sought to relitigate the settled action, in violation of a release in the settlement).

The circuits have split in addressing similar questions of federal courts' power under the All Writs Act to protect judgments and control diehard litigants. On one hand, most have read the All Writs Act generously. Presented with statutory removal questions nearly identical to the one posed here, the Sixth and Eighth Circuits have held that state-court actions that could produce judgments undermining federal consent orders — and in one case a state-court action that was merely barred by the preclusive effect of a federal consent decree — are removable under § 1441, with original subject-matter jurisdiction supplied by the All Writs Act. *See Xiong v. State of Minn.*, 195 F.3d 424, 426 (8th Cir. 1999); *Bylinski v. City of Allen Park*, 169 F.3d 1001, 1003 (6th Cir. 1999); *N.A.A.C.P., Minneapolis Branch v. Metro. Council*, 125 F.3d 1171, 1174 (8th Cir. 1997) (removal simply to determine preclusive effect of the federal consent decree), *cert. granted; summarily vacated and remanded for reconsideration in light of Rivet v. Regions Bank*, 522 U.S. 470, 118 S. Ct. 921 (1998), 522 U.S. 1145, 118 S. Ct. 1162 (1998), *reinstated*, 144 F.3d 1168, 1169 (1998); *Sable v. Gen. Motors Corp.*, 90 F.3d 171, 175 (6th Cir. 1996). The Second Circuit has not yet gone that far, but it has repeatedly held that a district court may, on motion of parties to an action over which it has jurisdiction, order a common-law removal (distinct from that authorized by 28 U.S.C. § 1441(a) or other removal statutes) to federal court of a state-court action, even if there is no other basis of federal subject-matter jurisdiction, when the prosecution of the state-court action threatens the integrity of a consent decree or judgment entered in the federal action. *See In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1431 (2d Cir. 1993); *United States v. City of N.Y.*, 972 F.2d 464, 469 (2d Cir. 1992); *Yonkers Racing Corp. v. City of*

Yonkers, 858 F.2d 855, 855 (2d Cir. 1988); *see also United States v. Am. Soc'y of Composers, Authors, & Publishers*, 32 F.3d 727, 731 (2d Cir. 1994) (All Writs Act provides independent ground of federal subject-matter jurisdiction of motion to vacate an arbitral award, when the parties arbitrated according to the terms of a preexisting federal consent decree). The Seventh Circuit has agreed with the Second Circuit, possibly in dicta (while the procedural history is not completely clear from the opinion, it appears that the district court enjoined the state-court actions rather than deeming them "removed"). *In re VMS Secs. Litig.*, 103 F.3d at 1324. The Third Circuit has also embraced the Second Circuit rule, although it declined to find appellate jurisdiction under the All Writs Act to review the district court's refusal to exercise removal jurisdiction under the Act. *Davis v. Glanton*, 107 F.3d 1044, 1047 n.4 (3d Cir. 1997).

On the other hand are the minority of courts that have taken a less expansive view. The Tenth Circuit has held that the All Writs Act does not furnish removal jurisdiction at all because it confers no independent jurisdiction. *See Hillman v. Webley*, 115 F.3d 1461, 1469 (10th Cir. 1997). A Ninth Circuit opinion could be read to reach a similar conclusion. *See Westinghouse Elec. Corp. v. Newman & Holtzinger, P.C.*, 992 F.2d 932, 937 (9th Cir. 1993) (state-court action alleging breach of the agreement that led to a federal court's consent protective order was not removable, both because it did not concern the interpretation of the protective order itself and because the All Writs Act "may be invoked by a district court only in aid of jurisdiction which it already has"). Some academic opinion tends to reject the expansive view of the All Writs Act preferred by the Second, Sixth, and Eighth

Circuits. *See* Joan Steinman, *The Newest Frontier of Judicial Activism: Removal Under the All Writs Act*, 80 B.U.L. Rev. 773 (2000); Lonny Sheinkopf Hoffman, *Removal Jurisdiction and the All Writs Act*, 148 U. Pa. L. Rev. 401 (1999).

We tend toward the Tenth Circuit camp and conclude that the district court lacked removal jurisdiction over the *Henson* case. Two settled principles, one about the prerequisites of § 1441 removal, and another about the All Writs Act, lead us to this conclusion. First, § 1441(a) authorizes removal only of actions "of which the district courts of the United States have original jurisdiction." 28 U.S.C. § 1441(a). That phrase means that actions are not removable unless they "originally could have been filed in federal court." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987). The implication of that rule here is that removal is proper only if the All Writs Act could have furnished subject-matter jurisdiction over the *Henson* action if it had first been filed in federal court. And, second, the Act does not provide such jurisdiction. The All Writs Act authorizes writs "in aid of [the courts'] respective jurisdictions," and thus does not provide an independent basis of federal subject-matter jurisdiction; a plaintiff cannot sue invoking only the court's All Writs power. *Clinton v. Goldsmith*, 119 S. Ct. 1538, 1542 (1999); *see Pa. Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 40, 106 S. Ct. 355, 360 (1985) (Act authorizes orders protecting the jurisdiction that a federal court has "otherwise acquired"); *McIntire v. Wood*, 11 U.S. (7 Cranch) 504, 504 (1813) (no jurisdiction under contemporary All Writs Act over action seeking writ of mandamus against Ohio official based on federal law); *see generally* Hoffman, *supra*, at 433-39 (history

of All Writs Act strongly implies that it is not an independent source of subject-matter jurisdiction). Section 1441 and the All Writs Act do not, therefore, together provide a right to remove actions such as *Henson*.

The most troubling counterargument, and the one that the Second, Sixth, and Eighth Circuits ultimately rely on, is that the All Writs Act is jurisdictional caulk — it plugs the cracks in federal jurisdiction through which crafty litigants can escape the effect of a federal order. *See United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172-73, 98 S. Ct. 364, 372 (1977) (articulating this broad view of the All Writs Act's purpose). Therefore, the argument goes, the Act authorizes any exercise of authority that is convenient for effectuating a federal judgment, including the exercise of removal jurisdiction over a different action whose prosecution is inconsistent with a federal judgment. *See, e.g.*, *In re Agent Orange Prod. Liab. Litig.*, 996 F.2d at 1431. This reasoning is tempting in a case like ours, but it goes too far. Too elastic an interpretation of the All Writs Act perverts it from a tool for effectuating Congress's intent in conferring jurisdiction on the lower federal courts into a device for judicially re-equilibrating a state-federal balance that is Congress's to strike. By requiring complete diversity in § 1332, and by limiting the time for removal of diversity cases to one year after their commencement, Congress has decided that *Henson* does not belong in federal court. The All Writs Act, even as jurisdictional caulk, should not allow us to override Congress's decision unless no other reasonable way appears to ensure that the federal court's orders are heeded. *See Clinton*, 119 S. Ct. at 1543. The district court did not need to exercise jurisdiction over *Henson* when it had the ready remedy of an injunction

Appendix A

against prosecution of the action, properly issued under the All Writs Act.

All things considered, we conclude that the district court lacked subject-matter jurisdiction over the *Henson* action.

Conclusion

We accordingly vacate the district court's order dismissing *Henson* and remand with instructions for the court to remand *Henson* to Louisiana state court. We do not, however, imply that the district court may not by injunction force *Henson*'s dismissal. We affirm the district court's award of sanctions against Zohdy.

Appendix A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-6021
D. C. Docket No. 98-01150-CV-CB

HURLEY HENSON,

Plaintiff-Appellant,

versus

CIBA-GEIGY CORPORATION,
ROBERT RAAB, et al.,

Defendants-Appellees.

No. 99-6130
D. C. Docket No. 94-00647-CV-CB-S

RUSSELL PRICE, et al., on behalf of themselves
and others similarily,

Plaintiffs-Appellants,

HURLEY HENSON,

Movant-Appellant,

versus

CIBA-GEIGY CORPORATION, a corporation,

Defendant-Appellee.

Appendix A

Appeals from the United States District Court
for the Southern District of Alabama

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as the judgment of this Court.

Entered: August 14, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION IN *PRICE, et al. v. CIBA-GEIGY CORPORATION* DATED AND FILED NOVEMBER 24, 1998

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

CIVIL ACTION NO. 94-0647-CB-S

RUSSELL PRICE, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION,

Defendant.

ORDER

This matter is before the Court on motions by Class Counsel (Doc. 152) and Defendant Ciba-Geigy (Doc. 155) For Sanctions, To Enforce Settlement Agreement, and to Have Hany A. Zohdy Held in Contempt. In their motions, Class Counsel and Ciba-Geigy also requested this Court to enjoin proceedings in *Hurley Henson, et al. v. Ciba-Geigy Corp., et al.*, No. 43,620, Div. "D" 18th Judicial District Court,

Parish of Iberville, State of Louisiana, then pending in Louisiana State court.[1]

It is clear to this Court that, under the terms of the Stipulation of Settlement in *Price, et al. v. Ciba-Geigy*, the plaintiffs in *Henson*, referred to as the "Henson Group" were required to dismiss the state court action with prejudice as of the approval date of the Stipulation of Settlement. Rather than obey this Court's clear and unambiguous order, the "Henson Group" and their counsel, Hany A. Zohdy, attempted to thwart this Court's jurisdiction by filing an amended complaint in *Henson* in which they put forward claims which they say do not fall within the ambit of the Stipulation of Settlement.

However, the Stipulation of Settlement clearly states that *any and all claims* in the Related Case (*Henson*) shall be dismissed with prejudice. This Court can discern no subtlety in its Order and therefore, the Court finds that Hany A. Zohdy has acted in a manner calculated to offend this Court and in complete defiance of the Court's Order.

This Court ordered Zohdy to show cause why *he* should not be sanctioned for his defiance (Doc. 153). Zohdy responded only that the *Henson* case should not be the subject of an injunction from this Court and, aside from plaintive calls not to sanction his client, did not address the issue of sanctions to be imposed upon him. For these reasons, it is hereby **ORDERED** that the terms of the Stipulation of

1. *Henson, et al. v. Ciba-Geigy, et al.* has since been removed to Federal court and was transferred to this Court. The case is now identified as 98-1150-CB-S.

Settlement be enforced and *Hurley Henson, et al. v. Ciba-Geigy Corp., et al.*, 98-1150-CB-S (S.D. Ala.) be and hereby is **DISMISSED with PREJUDICE**. Additionally, it is hereby **ORDERED** that Hany A. Zohdy pay all costs incurred by the *Hurley* defendants subsequent to the Approval Date for the *Price* Stipulation of Settlement, August 26, 1994. The *Hurley* Defendants are hereby instructed to file a statement reflecting their reasonable costs in defending this case after August 26, 1994 with this Court no later than December 22, 1998.

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE

APPENDIX C — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION IN *HENSON, et al. v. CIBA-GEIGY CORPORATION, et al.* DATED AND FILED NOVEMBER 24, 1998

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

CIVIL ACTION NO. 98-1150-CB-S

HURLEY HENSON, *et al.*,

Plaintiffs,

v.

CIBA-GEIGY CORPORATION, *et al.*,

Defendant.

ORDER

Pursuant to the Order entered this day in *Price, et al. v. Ciba-Geigy*, 94-00647-CB-S (S.D. Ala.) it is hereby **ORDERED, ADJUDGED, and DECREED** that all claims by Plaintiffs, the "Henson Group" be and hereby are **DISMISSED with PREJUDICE**. Pursuant to the Order entered in *Price*, all costs incurred by Defendants here are to be taxed to Hany A. Zohdy, counsel for Plaintiffs, the "Henson Group".

DONE this the 24th day of November, 1998.

s/ Charles R. Butler, Jr.
CHIEF DISTRICT JUDGE